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Patrick W. Turner  
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EXECUTIVE SECRETARY

November 19, 1999

**VIA HAND DELIVERY**

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Re: *Notice of Proposed Rulemaking to Create Rule 1220-4-11 et seq. Concerning  
Regulations of Certain Telemarketing Practices*  
Docket No. 99-00645

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Joint Comments of BellSouth Telecommunications, Inc., United Telephone-Southeast, Inc., Sprint Communications Company, L.P., Sprint Spectrum, L.P. and United Telephone Company to the Tennessee Regulatory Authority's Proposed Rules concerning the regulation of certain telemarketing practices.

Very truly yours,

Patrick W. Turner

PWT/jem

Enclosure

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BEFORE THE  
TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

RECEIVED  
REGULATORY AUTHORITY  
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IN RE:

NOTICE OF PROPOSED RULEMAKING )  
TO CREATE RULE 1220-4-11 et seq. )  
CONCERNING REGULATIONS OF )  
CERTAIN TELEMARKETING PRACTICES )

EXECUTIVE SECRETARY

Docket No. 99-00645

JOINT COMMENTS OF BELL SOUTH TELECOMMUNICATIONS, INC.,  
UNITED TELEPHONE-SOUTHEAST, INC.,  
SPRINT COMMUNICATIONS COMPANY L.P.,  
SPRINT SPECTRUM L.P. and  
UNITED TELEPHONE COMPANY

BellSouth Telecommunications, Inc. ("BellSouth") and United Telephone-Southeast, Inc., Sprint Communications Company L.P., and Sprint Spectrum, L.P. (collectively "Sprint") and United Telephone Company respectfully submit these Joint Comments to the Tennessee Regulatory Authority ("TRA") Proposed Rules 1220-4-11 et. seq. entitled "Regulations of Certain Telemarketing Practices" ("Proposed Rules"). We acknowledge that Chapter 478 of the Public Acts of 1999 ("the Act")<sup>1</sup> provides necessary and important protections for Tennessee consumers, and we believe adoption of the suggestions set forth in these Joint Comments will further the policies underlying the Act while protecting the interests of all persons and entities affected by the Act.

I. GENERAL COMMENTS

As signing parties to the Tennessee Telephone Association's Joint Comments to the Proposed Rules dated October 20, 1999 ("TTA Joint Comments"), we wish to emphasize the importance of those joint comments by fully incorporating them into these Joint Comments by

<sup>1</sup> The Act is codified at T.C.A. §§65-4-401 et. seq.

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reference. For the convenience of the Authority, we have attached a copy of the TTA Joint Comments as Exhibit A. Additionally, we note that several of the Proposed Rules are similar to existing FCC regulations pertaining to telemarketing practices,<sup>2</sup> and we recommend that the Proposed Rules adopt or closely follow the language of existing federal regulations whenever possible in order to create a consistent body of regulations. The Specific Comments that follow incorporate several suggestions consistent with this recommendation.

### **SPECIFIC COMMENTS**

In addition to the comments set forth in the TTA Joint Comments, we make the following comments to specific provisions in the rules. For the sake of clarity, our specific comments are grouped according to the headings set forth in the Proposed Rules, and we have attached as Exhibit B a redline copy of the Proposed Rules incorporating all of our comments and all of the TTA Joint Comments.

#### **122-4-11-.01(2) – Definition of ADAD**

The definition of "ADAD" in section 1220-4-11-.01(2) does not include all of the elements of the statutory definition of "ADAD equipment" set forth in T.C.A. §47-18-1501(b)(1). We, therefore, suggest revising this definition to quote the statutory definition of the term as follows:

"ADAD or automatic dialing and announcing device" means any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers and disseminating recorded messages to the numbers so selected or dialed.

#### **122-4-11-.01(5) – Definition of Applicant**

We suggest eliminating this definition from the Proposed Rules. The term "applicant" appears only once in the text of the Proposed Rules, *see* Proposed Rule 1220-4-11-.04(1)(d), and

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<sup>2</sup> See FCC Telephone Consumer Protection Act of 1991 Regulations, Subpart L,

in that instance the term refers to an applicant for an ADAD permit, not to a subscriber wanting to enroll in the do-not-call database.

#### **Use of the Term "Telemarket" Generally**

The term "telemarketing" is not defined in the text of the Act. Instead, the Act refers to and defines "telephone solicitations." *See* T.C.A. §65-4-101(6). We, therefore, suggest deleting the term "telemarket" from the Proposed Rules and incorporating the statutory terms "telephone solicitation" and "telephone solicitor" as appropriate.

#### **122-4-11-.01(7) – Definition of Authorized Telemarketer**

We suggest deleting the term "Authorized telemarketer" from the Proposed Rules. While the TRA is authorized to promulgate rules necessary to implement the Act and to initiate proceedings relative to violations of the Act, *see* T.C.A. §§65-4-405(b) & (f), the Act does not require telephone solicitors to obtain any approval or authorization from the TRA prior to making telephone solicitations.

#### **122-4-11-.01(9) – Definition of Caller Identification Service**

We note that this definition of "caller identification service or caller ID" in section 1220-4-11-.01(9) does not include all of the elements of the statutory definition of "caller identification service" set forth in T.C.A. §65-4-401(2). We, therefore, suggest revising this definition to quote the statutory definition of the term as follows:

"Caller identification service or caller ID" means telephone service which notifies telephone subscribers of the telephone number of incoming telephone calls.

#### **122-4-11-.01(11) – Definition of Database**

In order to protect the privacy interests of Tennesseans, we suggest that while the database maintained by the TRA necessarily will include information such as subscriber names,

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Restrictions on Telephone Solicitation, 47 C.F.R. §64.1200 (1998).

addresses, and telephone numbers, the Register to be made available to telephone solicitors should include only the telephone numbers of residential customers who object to receiving telephone solicitations. The legislature provided that information in the database is not subject to the open records act, *see* T.C.A. §65-4-405(e), and it specifically granted the TRA the authority to "specify the methods by which [telephone solicitors] will obtain access to the database as required to avoid calling the telephone numbers of residential subscribers included in the database." T.C.A. §65-4-405(b)(5) (emphasis added). The only information a telephone solicitor requires "to avoid calling the telephone numbers of residential subscribers included in the database" is a list of telephone numbers.

The TRA, therefore, has the statutory authority to specify that telephone solicitors will have access only to the telephone numbers included in the database, and it should exercise that authority in this rulemaking. Limiting access to telephone numbers serves the purpose of the Act – allowing telephone solicitors to avoid calling the numbers of residential subscribers who object to receiving telephone solicitations -- while protecting other information (such as unpublished names and addresses) from public disclosure. Moreover, given that access to such information will be provided "via the Internet," *see* Proposed Rule 1220-4-11-.11(2)(b), it is especially important to limit the information to which telephone solicitors have access to a list of telephone numbers in order to prevent hackers from improperly gaining access to the database and obtaining unpublished numbers and addresses. In order to protect the privacy interests of consumers, therefore, we suggest amending the definition of "Database" to read as follows:

"Database" means the information from which the Authority compiles the Register. The database shall be maintained by the Authority, or its designee, for the purpose of fulfilling the requirements of Chapter 478 of the Public Acts of 1999.

#### **122-4-11-.01(14) – Definition of Do Not Call Register or Register**

Consistent with the suggestions above, we suggest amending section 1220-4-11-.10(14) to read as follows:

"Do Not Call Register or Register" means a list of telephone numbers of residential subscribers who have requested from the Authority that their telephone numbers not be solicited by telephone solicitors.

Moreover, to fully incorporate this concept throughout the Proposed Rules, we also recommend amending various Proposed Rules to read as follows:

1220-4-11-.11(2)(a): "The telephone number of Tennessee residential subscribers who object to receiving telephone solicitations."

1220-4-11-.11(2)(b): "The Register shall be provided . . . ."

1220-4-11-.11(2)(d) "No telephone solicitor or their independent telephone solicitation contractors shall provide the Register or a copy of the Register to any other person or entity."

#### **122-4-11-.01 – Proposed New Definition ("Existing Customer")**

We propose the addition of the term "existing customer" in Proposed Rule 1220-4-11-.01 as follows:

"Existing customer" includes a residential subscriber with whom the person or entity making a telephone solicitation has had a relationship within the prior twelve (12) months.

This is the express language of section 1 of the Act. T.C.A. §65-4-401(6)(B)(iii).

#### **122-4-11-.01(15) – Definition of Independent Telemarketing Contractor**

We suggest amending the definition of "independent telemarketing contractor" in section 1220-4-11-.10(15) to read as follows:

"Independent telephone solicitation contractor" means a person or business that is employed by telephone solicitors to make telephone solicitations on their behalf. The existence of a business relationship as confirmed by a contract between the telephone solicitor and the independent telephone solicitor contractor serves as evidence of the relationship.

This language more closely conforms to the language of T.C.A. §65-4-405(g). Consistent with previous suggestions, this language also replaces the word "telemarketing" with the phrase "telephone solicitation."

**1220-4-11-.01(17) – Definition of Local Exchange Carriers**

We suggest amending the definition of "Local exchange carrier" in section 1220-4-11-.10(17) of the Proposed Rules to read as follows:

"Local exchange company," as used in this Rule Chapter, includes telecommunications service providers and competing telecommunications service providers as defined in T.C.A. §65-4-101, as well as telephone cooperatives and cellular or other wireless telecommunications providers operating in Tennessee.

This language more closely conforms to the language of T.C.A. §65-4-401(3).

**1220-4-11-.01(20) – Definition of Telemarketer**

We suggest replacing the term "Telemarketer" in section 1220-4-11-.10(17) with the term "Telephone solicitor" and suggests the following definition:

"Telephone solicitor" means any natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephone solicitation, including but not limited to, calls made by use of automated dialing, recorded messages or by a live person.

As stated previously, the term "telemarketing" is not defined in the text of the Act. We, therefore, suggest deleting the term "telemarketer" from the Proposed Rules and incorporating the statutory term "telephone solicitor" as appropriate. *See, e.g.*, T.C.A. §47-18-1526(a)(3)

**1220-4-11-.01(21) – Definition of Telephone Solicitation**

We suggest amending this definition to more fully incorporate the language of the statutory definition of the term and to more fully incorporate the statutory exclusions related to the term as set forth in T.C.A. §65-4-401(6):

"Telephone solicitation" means any voice communication over a telephone for the purpose of encouraging the purchase or rental of, or investment in, property,

goods, or services, originating from Tennessee or elsewhere. Telephone solicitation does not include:

- (a) any voice communications to any residential subscriber with that subscriber's prior express permission;
- (b) any voice communication over a telephone to a residential subscriber if such communication is made on behalf of a not-for-profit organization exempt from paying taxes under the Internal Revenue Code § 501(c), if a bona fide member of the exempt organization makes such voice communication;
- (c) any voice communication over a telephone to any residential subscriber in this state who is an existing customer; or
- (d) occasional and isolated voice communications over a telephone to a residential subscriber if such communication is made on behalf of a business if:
  - (i) A direct employee of the business makes the voice communication;
  - (ii) The communication is not made as part of a telecommunications marketing plan;
  - (iii) The business has a reasonable belief that the specific person who is receiving the voice communication is considering purchasing the service or product sold or leased by the business and the call is specifically directed to such person;
  - (iv) The business does not sell or engage in telemarketing services; and
  - (v) The business does not make more than three (3) such voice communications in any one (1) calendar week.

**1220-4-11-.02(1)**

We suggest replacing Proposed Rule 1220-4-11-.02(1) with the following language to more accurately reflect the language of T.C.A. §65-4-402 and T.C.A. §47-18-1502:

Without the permission of the residential subscriber, no telephone solicitor shall call a residential telephone subscriber at any time other than between the hours of 8:00 a.m. to 9:00 p.m. (local time at the called party's location). No ADAD



message may occur prior to 8:00 a.m. or after 9:00 p.m. (local time at the called party's location).

**1220-4-11-.02(2)**

To avoid confusing the database or the Register with the list required by T.C.A. §47-18-1526, we suggest replacing the language of Rule 1220-4-11-.02(2) with the following language:

All telephone solicitors must institute procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of the telephone solicitor in compliance with 47 CFR 64 or 16 CFR 310.

**1220-4-11-.02(3)**

We suggest amending the language of Proposed Rule 1220-4-11-.02(3) to read as follows:

Persons or companies planning to make telephone solicitations to Tennessee residential subscribers are required to purchase from the Authority the Register and must refrain from calling those telephone numbers on the Register, unless exempted by state law.

**1220-4-11-.02(4)**

We recommend replacing Rule 1220-4-11-.02(4) with the following:

- (4) All telephone solicitations to residential subscribers shall, at the beginning of such call, state clearly the identity of the person initiating the call and entity or organization such person represents as well as meet the following requirements:
  - (a) Within the first twenty-five (25) seconds of the call and at the conclusion of the call, ADAD messages must clearly state the name and telephone number of the person or organization initiating the call. The telephone number given must be answered during normal business hours by someone who is an agent of the person or organization on whose behalf the automatic call was made and who is willing and able to provide information concerning the automatic call.
  - (b) Live telephone solicitors must provide a telephone number at which the person or entity may be contacted.

This suggested language more accurately reflects the provisions of T.C.A. §§65-4-402, 47-18-1502(a)(5), and 47-18-1502(a)(7).

**1220-4-11-.02(12)**

We recommend amending Rule 1220-4-11-.02(12) to read as follows:

"Telephone solicitors" shall within ten (10) working days, after receipt of a complaint forwarded by the Authority, file a written reply, with the Authority.

The addition of "working" makes the rule consistent with the existing customer complaint rule 1220-4-2-.13(3).

**1220-4-11-.03**

We recommend deleting from the Proposed Rule the sentence reading, "A separate permit must be obtained for each ADAD." We believe the intent of the ADAD rules is to control the entity using ADAD, and we believe that one permit covering the person or business using the ADAD is sufficient. Requiring one permit per ADAD is onerous and expensive, and it does not fulfill any purpose within the Act.

**1220-4-11-.04(1)(d)**

We recommend amending Proposed Rule 1220-4-11-.04(1)(d) to read as follows:

A ten thousand dollar (\$10,000) institutional surety bond. Such bond shall be executed by the applicant as principal and by a surety company authorized to do business in Tennessee. The Authority may waive the bond requirement for any operator demonstrating financial responsibility by the submission of a letter of credit from an accredited financial institution or by other acceptable means.

As rewritten, the rule would be consistent with T.C.A. §47-18-1503(a)(3).

**1220-4-11-.04(3)(b)**

We recommend amending Proposed Rule 1220-4-11-.04(3)(b) to read as follows:

Any person aggrieved by the Coordinator's ruling on an application may appeal to the Authority by requesting a hearing before the Authority.

As written, the Proposed Rule requires an aggrieved person to appeal to the chief of the division before appealing to the Authority. This additional step unnecessarily delays the application process.

**1220-4-11-.06(1)**

We recommend amending Proposed Rule 1220-4-11-.06(1) to read as follows:

In order to determine whether an ADAD operator is complying with state law and the Authority's rules, the Division may inspect, upon providing a minimum of 48 hours prior written notice, the ADAD operator's facilities, require the ADAD operator to file a tape recording of a typical call made using the ADAD, and request additional information the DCR Coordinator needs to make his or her determination.

We believe the inserted language provides ADAD operators with reasonable protections from impromptu visits.

**1220-4-11-.09(1)(a)**

We recommend amending Proposed Rule 1220-4-11-.09(1)(a) to read as follows in order to conform the language of the Proposed Rule to the language of T.C.A. §47-18-1507(2):

ADAD calls to Existing Customers.

**1220-4-11-.10(4)**

We recommend amending Proposed Rule 1220-4-11-.10(4) to read as follows:

The Division at the beginning of each quarter will update the Register.

From an administrative standpoint, we believe that a quarterly update is a more reasonable time-frame for updating the Register, particularly where a paper copy of the Register is being used.

**1220-4-11-.10(5)**

We recommend amending Rule 1220-4-11-.10(5) to read as follows:

Telephone solicitors wishing to make telephone solicitations to Tennessee residential customers must subscribe to the Authority for access to or electronic or paper copies of the Tennessee Do Not Call Register as described below.

This revised language more accurately reflects the provisions of T.C.A. §65-4-405(d), which establish the fee that telephone solicitors shall be charged "for access to or for paper or electronic copies of the database" and which provide that "unlimited electronic copies of the database will be provided to persons or entities who pay the fee for such access." Finally, we believe the word "subscribe" is more accurate than "apply" because, other than a simple request, there is no application process set forth in the Act.

**1220-4-11-.11(4)(c)**

We recommend amending Rule 1220-4-11-.11(4)(c) to read as follows:

Any person aggrieved by the DCR Coordinator's ruling on the status of independent telephone solicitor contractor may appeal to the Authority by requesting a hearing before the Authority.

As written, the rule requires such an aggrieved person to appeal to the chief of the division before appealing to the Authority. This additional step unnecessarily delays the process.

**1220-4-11-.11(3)(c)**

We recommend amending Rule 1220-4-11-.11(3)(c) to read as follows:

The annual fee of \$500 shall be prorated on a monthly basis for periods less than one (1) year.

We believe this is a more equitable rule, particularly in a situation where a telephone solicitor is requesting the Register on March 15<sup>th</sup> of a given year. As written, the Proposed Rule would require the telephone solicitor to pay \$500 for the Register for 15 days of use.

**1220-4-11-.12(1)(b)**

We recommend amending Proposed Rule 1220-4-11-.12(1)(b) to provide that a residential telephone subscriber will remain in the "do not call" database for one year and to provide the opportunity for renewal prior to the one-year expiration. This change would make it

easier for the DCR Coordinator to periodically purge the database pursuant to Proposed Rule 1220-4-11-.12(e), and it would provide a mechanism to account for reassigned numbers.

**1220-4-11-.14(1)**

We recommend amending Rule 1220-4-11-.14(1) to read as follows:

It is a violation of Chapter 478 of the Public Acts of 1999 and of this Rule Chapter for a telephone solicitor to knowingly make or cause to be made any telephone solicitation to any telephone number that appeared in the copy of the Register that was in effect ninety (90) days prior to the time the telephone solicitation was made.

The Act prohibits making or causing to be made (not attempting to make or attempting to cause to be made) certain telephone solicitations. *See* T.C.A. §65-4-404. The Act also sets forth a "knowingly" element that is absent from the Proposed Rule. *Id.* Moreover, the Act and the statute clearly contemplate telephone solicitors relying on "paper copies" of the list of phone numbers included in the do not call list. *See* Act, §5(d). As a practical matter, however, a telephone solicitor cannot be expected to obtain and immediately rely upon a paper copy of the list. Telephone solicitors realistically require 90 days from the release of the most recent Do Not Call list to stop calling a specific consumer. This timeframe allows the telephone solicitor 30 days to receive the newly updated file and remove the consumer's telephone number from all calling lists being loading for calling. An additional 60 day window is required to complete consumer contacts for telemarketing call lists selected prior to register updates. The proposed amendment, therefore, allows telephone solicitors a reasonable timeframe to perform the data processing necessary to comply with the proposed rules.

**1220-4-11-.14(1)(a)**

We recommend amending Rule 1220-4-11-.14(1)(a) to read as follows:

The residential telephone subscriber being solicited has had a relationship with the telephone solicitor within the prior twelve (12) months.

This amended language reflects the provisions of T.C.A. §65-4-401.

**1220-4-11-.14(3)**

We recommend amending Rule 1220-4-11-.14(3) to read as follows:

Telephone solicitors shall be held responsible for violations of this Rule Chapter by their independent telephone solicitor contractors. It shall be a defense in any proceeding brought under this Rule Chapter that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this Rule Chapter.

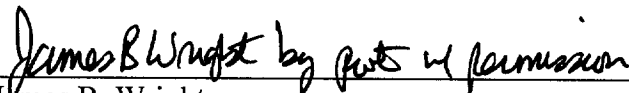
The reference to "revocation of authority to telemarket in Tennessee" should be deleted because, as noted above, the TRA has no statutory authority to grant or revoke such authority. The second sentence of the proposed amended language reflects the provisions of T.C.A. §65-4-408.

Respectfully submitted,



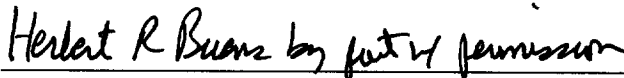
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**EXHIBIT "A"**

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

REGULATORY AUTH.

In Re: Regulation of Certain Telemarketing Practices; Don't Call List

Docket No. 99-00645

SEP 20 AM 9 01  
EXECUTIVE SECRETARY

JOINT COMMENTS

The following members of the Tennessee Telecommunications Association respectfully submit these Joint Comments to the Tennessee Regulatory Authority's ("TRA's") Proposed Rules<sup>1</sup> entitled "Regulations of Certain Telemarketing Practices":

Ardmore Telephone Company  
BellSouth Telecommunications, Inc.  
Ben Lomand Rural Telephone Cooperative, Inc.  
CenturyTel of Adamsville  
CenturyTel of Claiborne, Inc.  
CenturyTel of Ooltewah-Collegedale, Inc.  
Citizens Communications  
Concord Telephone Exchange (TDS)  
Crockett Telephone Company, Inc.  
DTC Communications  
Humphrey's County Telephone Company (TDS)  
Loretto Telephone Company  
NEXTLINK  
North Central Telephone Cooperative  
People's Telephone Company, Inc.  
Sprint  
Tellico Telephone Company (TDS)  
Tennessee Telephone Company (TDS)  
United Telephone Company  
West Tennessee Telephone Company

Although each of these entities reserves the right to file additional comments supplementing these joint comments and addressing aspects of the Proposed Rules that are not addressed in this filing, these

<sup>1</sup> The text of these Proposed Rules appeared in the September 15, 1999 volume of the *Tennessee Administrative Register*.



entities share the following concerns, and we strongly urge the Authority to amend the proposed rules to address these concerns:

We object to portions of the Proposed Rules which require certain service providers to police the activities of their subscribers.

We object to portions of the Proposed Rules which unfairly place these service providers in the role of prosecutor, judge, and jury with regard to the legality of a subscriber's proposed use of certain services.

We object to portions of the proposed rules which prohibit telephone solicitors from purchasing and service providers from providing telephone equipment or network elements that can block the Caller ID service of a subscriber. As explained below, this blanket prohibition is improper because there are many situations in which a telephone solicitor is not prohibited from blocking the Caller ID function.

We object to portions of the proposed rules that require certain service providers to print and distribute application forms for enrollment on the "Do Not Call" list. As explained below, this is a very costly and ineffective proposition, and there is no provision for the recovery of the costs associated with the printing and distribution of applications.

These objections are explained in more detail in the following discussion.

#### **I. Proposed Rule 1220-4-11-.02(5)**

For the reasons explained below, we recommend amending Proposed Rule 1220-4-11-.02(5) to read as follows:

Telephone solicitors are prohibited from knowingly using telephone equipment or telecommunications network elements to block the caller ID function on the telephone number of a residential subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone equipment of the called party.

This revision is necessary for several reasons. First, section 3 of Public Chapter 478 ("the Act") only prohibits telephone solicitors from "knowingly utilizing any method to block or otherwise circumvent" the caller identification service of a "residential subscriber in this State" to whom the telephone solicitor is placing a telephone solicitation. See Public Chapter 478, SECTION 3 (emphasis added). The Act does not prohibit a telephone solicitor from blocking the caller ID function of any person who

is not a residential subscriber or who is not being solicited. Thus while a telephone solicitor may not block the caller ID function when calling a residential number to make a telephone solicitation, the same solicitor may block the caller ID function when using the same telephone to call a business or to call a residential number for purposes other than solicitation (i.e. for checking on the status of a late payment). By purporting to prohibit any "telemarketing company" from blocking the caller ID function on any call it places, the proposed rule clearly is in conflict with the Act upon which it is based. The TRA, therefore, should amend the proposed rule to reflect the more narrow prohibitions set forth in the Act.

## **II. Proposed Rule 1220-4-11-.02(6)**

For similar reasons, we recommend eliminating Rule 1220-4-11-.02(6) in its entirety. As noted above, there are many situations in which the Act does not prohibit a telephone solicitor from blocking the caller ID function. A telephone solicitor, therefore, may legitimately purchase network services that allow caller ID blocking, and there is no statutory authority for a rule purporting to prohibit local exchange companies and interexchange carriers from providing such services. Moreover, the Proposed Rule conflicts with FCC orders requiring LECs to provide caller ID blocking capability to all subscribers. Finally, the Proposed Rule impermissibly requires local exchange companies and interexchange carriers to "police" the activities of their subscribers to determine whether a given subscriber is a "telemarketing company" and, if so, whether the network elements purchased by that subscriber "would block the display of the telemarketer's name and telephone number on the called party's caller ID equipment." This "policing" requirement is not only impermissible, but it is also unduly burdensome, if not impossible, to administer.

### **III. Proposed Rule 1220-4-11-.02(7)**

We recommend amending Rule 1220-4-11-.02(7) to read as follows:

Upon order of the Authority, a local exchange company or interexchange carrier shall disconnect local exchange service and/or toll service to any customer who uses an ADAD in violation of state law or this Rule Chapter.

As written, the proposed Rule would require a carrier to police its customers' use of its services and to make a determination as to the legality of that use. Additionally, placing a carrier in the position of prosecutor, judge, and jury potentially subjects the LEC or the IXC to liability if a court or the TRA disagrees with its determination of the legality of its customers' use of such services.

### **IV. Proposed Rule 1220-4-11-.13**

We recommend amending Rule 1220-4-11-.13 to read as follows:

- (1) Local exchange companies are required to inform their residential subscribers once a year of the opportunity to provide notification to the authority or its contractor that such subscriber objects to receiving telephone solicitations. This notification shall appear as a bill message or otherwise accompany the subscribers' monthly telephone bill.
- (2) In addition to the notification required by subsection (1), local exchange carriers, working in cooperation with the division, are required to place information in their White Page telephone directory informing their residential subscribers of the opportunity to provide notification to the authority or its contractor that such subscriber objects to receiving telephone solicitations.

The Act requires a local exchange company "to semi-annually inform its residential subscribers of the opportunity to provide notification to the authority or its contractor that such subscriber objects to receiving telephone solicitations," See Public Chapter No. 478, SECTION 5(b)(1)(emphasis added), and we do not object to informing customers of the opportunity to enroll in the database by way of the White Pages directory and by way of a bill message. We also suggest that the TRA establish an application form on its TRA web page and that the TRA urge other appropriate state agencies to establish prominent links to this application form on their web pages.

Nothing in the Act, however, requires telephone solicitors or independent telephone solicitor contractors to inform subscribers of how to enroll in the database or to provide applications for such enrollment as required by the Proposed Rules. Nor does the Act require local exchange companies to incur the expenses associated with printing application forms in directories and bill inserts, especially without being compensated for the costs of printing and distributing such application forms. As indicated by the experience some industry members have had in the state of Georgia, such an approach is both costly and inefficient.

For example, on a one-time basis, BellSouth provided for the printing of a *Special Notice on Telephone Solicitations* in directories across the state of Georgia. The cost of this one-time inclusion of the application form in the directory was significant, and less than 2.5% of the applications the Georgia PSC received for inclusion in Georgia's "do not call" database were the application forms that appeared in the directory.

Additionally, BellSouth was required to send application forms to all of its Georgia subscribers in 1998 (the first year of Georgia's no-call list), and BellSouth included this application on a separate stock card in the bill. BellSouth's Georgia subscribers found this to be quite confusing, as many of those subscribers included the application forms (and the fees required by the Georgia statute) along with their BellSouth bill payment and mailed them to BellSouth instead of sending the application and fee to the Georgia PSC. It cost BellSouth approximately \$600,000 to facilitate reconciliation of applications and payments to the administrator of the Georgia No Call List.

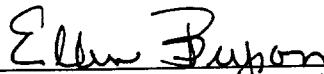
Other members of the industry had similar experiences in the state of Georgia. We, therefore, object to the requirement of providing application forms to residential customers. Past experience indicates that this approach will create significant customer confusion and unrecoverable costs.

Requiring industry members to incur these costs without being reimbursed for these costs constitutes an unconstitutional taking.

### CONCLUSION

We appreciate the opportunity to present these concerns to the Tennessee Regulatory Authority, and we look forward to cooperating with the Authority in amending the proposed rules to fairly, effectively, and efficiently implement the provisions of Public Chapter No. 478.

Respectfully submitted,



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Ellen Bryson, Executive Director  
Tennessee Telephone Association  
226 Capitol Boulevard, #212  
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(615) 256-8005

On Behalf of:

Ardmore Telephone Company  
BellSouth Telecommunications, Inc.  
Ben Lomand Rural Telephone Cooperative, Inc.  
CenturyTel of Adamsville  
CenturyTel of Claiborne, Inc.  
CenturyTel of Ooltewah-Collegedale, Inc.  
Citizens Communications  
Concord Telephone Exchange (TDS)  
Crockett Telephone Company, Inc.  
DTC Communications  
Humphrey's County Telephone Company (TDS)  
Loretto Telephone Company  
NEXTLINK  
North Central Telephone Cooperative  
People's Telephone Company, Inc.  
Sprint  
Tellico Telephone Company (TDS)  
Tennessee Telephone Company (TDS)  
United Telephone Company  
West Tennessee Telephone Company

**EXHIBIT "B"**

For a copy of this notice of rulemaking hearing, contact K. David Waddell, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN, and (615) 741-22904.

## SUBSTANCE OF PROPOSED RULES

### CHAPTER 1220-4-11 REGULATIONS OF CERTAIN TELEMARKETING PRACTICES

#### NEW RULES

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#### 1220-4-11.01 DEFINITIONS

- (1) "Act" refers to Chapter 478 of the Public Acts of 1999.
- (2) ~~"ADAD" means automatic dialing and announcing device that is used to dial telephone numbers and play automated verbal messages when the calls are answered.~~  
"ADAD or automatic dialing and announcing device" means any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers and disseminating recorded messages to the numbers so selected or dialed.
- (3) "ADAD Operator" means a person or business that uses an automatic dialing and announcing device.
- (4) "ADAD Permit" means a document reflecting that a person or business has been approved by the Authority to use ADAD equipment.
- (5) ~~"Applicant" means a person who applies to the Tennessee Regulatory Authority to be placed on the Tennessee Do Not Call Register.~~
- (6) "Authority" means the Tennessee Regulatory Authority.
- (7) ~~"Authorized telemarketer," means a telemarketing company that has met the requirements of this Rule Chapter to solicit Tennessee telephone subscribers.~~

- (87) "Business Telephone Subscriber" means a person or company who has subscribed to a business telephone service from a local exchange carrier.
- (98) "Caller identification service or caller ID" means telephone service ~~that displays the listed name and telephone number of the calling number on equipment owned by the called party~~ which notifies telephone subscribers of the telephone number of incoming telephone calls.



- (1409) "Charitable organization" means an organization registered with the Tennessee Secretary of State for the purposes of soliciting contributions from or within the state, or have funds solicited on its behalf as required in *T.C.A. §48-101-504*.
- (1410) "Database" means ~~a list of telephone numbers of residential telephone subscribers who elect not to be telemarketed~~ the information from which the Authority compiles the Register. The database shall be maintained by the Authority, or its designee, for the purpose of fulfilling the requirements of Chapter 478 of the Public Acts of 1999.
- (1411) "DCR Coordinator" refers to the individual employed by the Authority to oversee the regulation of ~~telemarketing~~ telephone solicitation practices, including the operations of the Do Not Call Register, delegated to the Authority by the General Assembly in Chapter 478 of the Public Acts of 1999 and *T.C.A. §47-18-1501*.
- (1412) "Division" refers to the Consumer Services Division.
- (1413) "Do Not Call Register or Register" means a list of telephone numbers of residential subscribers who have requested from the Authority that their telephone numbers not be solicited by telephone solicitors. ~~residential telephone subscribers who have requested from the Authority that their telephone numbers not be solicited by telemarketers.~~
- (1414) "Independent ~~telemarketing contractor~~ telephone solicitation contractor" means a person or business that is employed by ~~an authorized telemarketer~~ telephone solicitors to make telephone solicitations on their behalf. ~~for the purpose of soliciting or disseminating information over the telephone for the authorized telemarketing company.~~ The existence of a business relationship as confirmed by a contract between the telephone solicitor ~~authorized telemarketer~~ and the independent ~~telemarketing contractor~~ telephone solicitor contractor serves as evidence of the relationship.
- (1415) "Inter exchange carrier," means a company that is certificated by the Authority to provide long distance toll telephone service.
- (1416) "Local exchange ~~carriers company~~," as used in this Rule Chapter, includes telecommunications service providers and competing telecommunications service providers as defined in *T.C.A. §65-4-101*, as well as telephone cooperatives and cellular or other wireless telecommunications providers operating in Tennessee.
- (1417) "Not-for-profit" means an organization that is exempt from paying taxes under Section 501(c) of the Internal Revenue Code.
- (1418) "Residential subscriber" means a person who has subscribed to residential telephone service from a local exchange carrier or the other persons living, residing or visiting such person.
- (1419) "~~Telemarketer~~ Telephone solicitor" means any natural person, firm, organization, partnership, association or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a ~~telephonic sales call~~ telephone solicitation, including, but not limited to, calls made by use of automated dialing, ~~or recorded messages devices~~ or by a live person.
- (1420) "Telephone solicitation" means any live-voice communication over a telephone for the purposes of encouraging the purchase or rental of, or investment in, property, goods, or services, originating from Tennessee or elsewhere. ~~Telephone solicitation does not include: but does not include voice communications to any residential subscriber with that subscriber's prior express permission. This definition does not include communications made on behalf of a not for-profit organization exempt from paying taxes under Section 501(c) of the Internal Revenue Code or by a business that makes less than three (3) such voice calls to Tennessee residential telephone subscribers within any one (1) calendar week using its own employees.~~

(a) any voice communications to any residential subscriber with that subscriber's prior express permission;

(b) any voice communication over a telephone to a residential subscriber if such communication is made on behalf of a not-for-profit organization exempt from paying taxes under the Internal Revenue Code § 501(c), if a bona fide member of the exempt organization makes such voice communication;

(c) any voice communication over a telephone to any residential subscriber in this state who is an existing customer; or

(d) occasional and isolated voice communications over a telephone to a residential subscriber if such communication is made on behalf of a business if:

(i) A direct employee of the business makes the voice communication;

(ii) The communication is not made as part of a telecommunications marketing plan;

(iii) The business has a reasonable belief that the specific person who is receiving the voice communication is considering purchasing the service or product sold or leased by the business and the call is specifically directed to such person;

(iv) The business does not sell or engage in telemarketing services; and

(v) The business does not make more than three (3) such voice communications in any one (1) calendar week.

(21) "Existing customer" includes a residential subscriber with whom the person or entity making a telephone solicitation has had a relationship within the prior twelve (12) months.

*Authority: T.C.A. §§65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.*

1220-4-11-.02     GENERAL TELEMARKETING TELEPHONE SOLICITATION REGULATIONS

- (1) ~~No telemarketing solicitation or ADAD message may occur prior to 8:00 a.m. and after 9:00 p.m. (local time at the called party's location).~~

Without the permission of the residential subscriber, no telephone solicitor shall call a residential telephone subscriber at any time other than between the hours of 8:00 a.m. to 9:00 p.m. (local time at the called party's location). No ADAD message may occur prior to 8:00 a.m. or after 9:00 p.m. (local time at the called party's location).

- (2) ~~All telemarketing companies must maintain a "Do Not Call" register made up of those telephone subscribers who wish not to be telemarketed.~~

All telephone solicitors must institute procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of the telephone solicitor in compliance with 47 CFR 64 or 16 CFR 310.

- (3) ~~Persons or companies planning to telemarket make telephone solicitations to Tennessee residential subscribers are required to purchase from the Authority the database Register and must refrain from calling those telephone numbers on the database Register, unless exempted by state law.~~

- (4) ~~All telemarketing messages shall at the beginning of the call state the name of the person and the organization initiating the call as well as meet the following requirements:~~

~~(a) ADAD messages must state the name of the person twice, once at the beginning and again at the end of the message, as well as the telephone number of the person or organization initiating the call within the first 25 seconds of the beginning of the call.~~

~~(b) Live telemarketers must provide the telephone number where the call is originating, when requested by the called party.~~

- (4) All telephone solicitations to residential subscribers shall, at the beginning of such call, state clearly the identity of the person initiating the call and entity or organization such person represents as well as meet the following requirements:

(a) Within the first twenty-five (25) seconds of the call and at the conclusion of the call, ADAD messages must clearly state the name and telephone number of the person or organization initiating the call. The telephone number given must be answered during normal business hours by someone who is an agent of the person or organization on whose behalf the automatic call was made and who is willing and able to provide information concerning the automatic call.

(b) Live telephone solicitors must provide a telephone number at which the person or entity may be contacted.

- (5) ~~Telemarketing companies and their independent telemarketing contractors are prohibited from using telephone equipment or purchasing telecommunications network elements from local exchange carriers that block the caller ID function on the telephone number dialed so that the telephone number and name of the caller is not displayed on the telephone equipment of the called party.~~

Telephone solicitors are prohibited from knowingly using telephone equipment or telecommunications network elements to block the caller ID function on the telephone number of a residential subscriber to whom

a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone equipment of the called party.

- ~~(6) Local exchange carriers and inter exchange carriers are prohibited from providing any network services to telemarketing companies that would block the display of the telemarketers name and telephone number on the called party's caller ID equipment. Local exchange carriers and inter exchange carriers shall modify their tariffs to reflect the requirements of this Rule Chapter within sixty (60) days of its effective date.~~
- ~~(76) No local exchange carrier or inter exchange carrier shall provide either local exchange service or toll service to a customer if that customer uses an ADAD in violation of state law or this Rule Chapter.~~

Upon order of the Authority, a local exchange company or interexchange carrier shall disconnect local exchange service and/or toll service to any customer who uses an ADAD in violation of state law or this Rule Chapter.

- (87) No person or business shall use ADAD equipment without first obtaining a permit from the Authority as described in this Rule Chapter.
- (98) Violations of this Rule Chapter can result in civil actions prescribed by law, which include fines payable to the Authority.
- (109) Any charitable organization or an agent acting on its behalf engaged in telemarketing telephone solicitation shall register with the Tennessee Secretary of State as prescribed in *T.C.A. §48-101-504*.
- ~~(1110) Telemarketing companies~~ Telephone solicitors must adhere to state and federal statutes regarding telemarketing telephone solicitation practices, including, but not limited to, the Tennessee Consumer Protection Act.
- ~~(1211) Telemarketing companies~~ "Telephone solicitors" shall within ten (10) working days, after receipt of a complaint forwarded by the Authority, file a written responsereply, with the Authority.

*Authority: T.C.A. §§65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.*

#### 1220-4-11-.03 AUTHORIZATION TO OPERATE ADAD EQUIPMENT

- (1) Any person or business using an ADAD to call telephone numbers located in Tennessee for the purpose of conducting a poll, soliciting information, advertising or offering to sell, lease, rent, or give away any goods, services, real or personal property must obtain an ADAD permit issued by the Authority. ~~A separate permit must be obtained for each ADAD.~~ In order to obtain a permit, the ADAD operator must complete and file with the Authority an ADAD permit application form. Blank forms may be obtained on the Authority's Web Page found at [www.state.tn.us/tra](http://www.state.tn.us/tra) or by writing:

Consumer Services Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243—0505

*Authority: T. C. A. §§ 65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.*

#### 1220-4-11-.04 APPLICATION FOR AUTHORIZATION TO OPERATE ADAD EQUIPMENT

- (1) The ADAD application form shall contain the following information:
  - (a) The operator's name, address, and telephone number;
  - (b) The name and address of a designated agent for service of process in Tennessee;
  - (c) A copy of a Tennessee business license or a copy of a foreign corporation authorization from the Tennessee Secretary of State;
  - (d) A ten thousand dollars (\$10,000) institutional surety bond. Such bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in Tennessee. The Authority may waive the bond requirement for any operator demonstrating financial responsibility by the submission of a letter of credit from an accredited financial institution or by other acceptable means;
  - (e) A notarized statement from the operator indicating that he/she will comply with state law and this Rule Chapter when operating the ADAD;
  - (e) Any additional information requested by the DCR Coordinator in order to determine whether the permit should be granted.
- (2) The application must be accompanied by a \$25 filing fee plus a two (2) year registration fee of \$100. If the application for authority is denied, the Authority will refund the \$100 registration fee.
- (3) Upon receiving a completed application and filing fee and upon determining that the ADAD will be operated in compliance with state law and the Authority's rules, the DCR Coordinator shall grant the application. Failure to complete the application or provide additional information requested by the DCR may result in the denial of the application.
  - (a) If no action is taken within forty-five (45) business days from the date the application is received by the division, the application shall be deemed approved.
  - (b) Any person aggrieved by the Coordinator's ruling on an application may appeal to ~~chief of the division~~ then directly to the Authority by requesting a hearing before the Authority.

*Authority: T. C. A. §§65-2-102, 4 7-18-1501, 4 7-18-1526 and Chapter 478 of the Public Acts of 1999.*

#### **1220-4-11-.05 ISSUANCE OF ADAD PERMIT**

- (1) Upon approval of the application, the DCR Coordinator, acting on behalf of the Authority, will issue the ADAD operator a permit that will be valid for two (2) years.
- (2) If the information contained in the application changes during the time the permit is in effect, the ADAD operator must notify the Authority in writing within forty-five (45) business days from the effective date of the change.
- (3) The Authority may suspend or revoke an ADAD operator's permit upon finding that the operator has violated state law or the Authority's rules.

*Authority: T C. A. §§65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.*

#### **1220-4-1 1-.06 AUTHORITY INSPECTION OF ADAD COMPLIANCE**

- (1) In order to determine whether an ADAD operator is complying with state law and the Authority's rules, the division may inspect, upon providing a minimum of 48 hours prior written notice, the ADAD operator's facilities, require the ADAD operator to file a tape recording of a typical call made using the ADAD, and request ~~whatever~~ additional information the DCR Coordinator needs to make his or her determination.

*Authority: T C. A. §§ 65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.*

#### **1220-4-11-.07 ADAD RULE REQUIREMENTS**

- (1) Any ADAD that has, or is required to have, an ADAD permit from the Authority must operate in accordance with the following service requirements as well as the requirements found in 1220-4-11-.02 of this Rule Chapter.
  - (a) An ADAD may not be operated without a person attending the equipment nor may the ADAD be designed to operate without an attendant.
  - (b) No ADAD shall deliver a recorded message without the oral or written consent of the person receiving the call. A live operator must obtain oral consent before the recorded message is played. Written consent will be considered valid for two years, but may be withdrawn by sending a letter to the ADAD operator.
- (2) No ADAD may be used to dial telephone numbers at random or in numerical sequence, to call unpublished numbers, or to call health care facilities, fire protection or law enforcement agencies.
- (3) No ADAD may be used to solicit calls to any telephone number if a fee is charged for calling the number.
- (4) The recorded message played by an ADAD must clearly state, at least twice, the name and telephone number of the person or business responsible for the contents of the recorded message. The identification must be made within 25 seconds of the beginning of the call and at the end of the call.
  - (a) The telephone number identified in the message must readily accessible by having someone who is willing and able to provide information concerning the message during normal business hours.

- (5) If the person receiving an ADAD call does not consent to hear the recorded message or hangs up the telephone, the ADAD operator or ADAD equipment must hang up within ten seconds.

*Authority: T. C. A. §§65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.*

#### **1220-4-11-.08 PENALTY FOR VIOLATION OF ADAD REQUIREMENTS**

- (1) Any person or business using an ADAD to make calls to telephone numbers in Tennessee without an ADAD permit commits a Class A misdemeanor and is also subject to a civil penalty of \$1,000 for each illegal call as prescribed by *T.C.A. §47-18-1501*.
- (2) Any public utility, which is found to be in violation of this Rule Chapter by the Authority, may also be subject to the penalty prescribed in *T.C.A. §65-4-120*.

*Authority: T. C. A. §§65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.*

#### **1220-4-11-.09 EXCEPTIONS FOR ADAD USE**

- (1) Nothing in these rules is intended to apply to:
  - (a) ~~ADAD calls to Existing Customers made to customers who have previously ordered goods or services within the prior twelve (12) months from the ADAD operator or his or her principal;~~
  - (b) ADAD calls relating to the collection of lawful debts;
  - (c) ADAD calls made by a school concerning student attendance, including the cancellation of school for snow or other reasons; or
  - (d) ADAD calls made in response to a request from the person to whom the call is directed.
  - (e) ADAD call made for the exclusive purpose of warning residential telephone subscribers of emergency situations such as the threat of severe weather or other such events. The purpose of these kinds of calls is to warn the public rather than market the public goods or services.

*Authority: T. C. A. §§65-2-102, 47-18-1501, 47-18-1526 and Chapter 478 of the Public Acts of 1999.*

#### **1220-4-11-.10 MAINTAINING THE TENNESSEE DO NOT CALL REGISTER**

- (1) The Authority shall maintain a register of names, address and telephone numbers of all Tennessee residential telephone subscribers who have elected to not receive telephone solicitations.
- (2) The information contained in the database is not open to public inspection or disclosure as defined under Tennessee Code Annotated Title 10, Chapter 7. The Authority will take all necessary steps to protect the confidentiality of the information in the database.
- (3) The Authority shall include in its Register the list of Tennessee subscribers to the Federal Communications Commission's Do Not Call database.

- (4) The division at the beginning of each ~~month~~ quarter will update the Register.
- (5) ~~Companies~~ Telephone solicitors wishing to make telephone solicitations to Tennessee residential customers must ~~subscribe~~ conduct telemarketing in the state must apply to the Authority for access to or electronic or paper copies of a copy of the Tennessee Do Not Call Register as described below.

*Authority: T.C.A. §65-2-102 and Chapter 478 of the Public Acts of 1999.*

#### **1220-4-11-.11 ~~TELEMARKETERS~~ TELEPHONE SOLICITORS ACCESS TO THE TENNESSEE DO NOT CALL REGISTER**

- (1) It is the duty of the ~~telemarketers~~ telephone solicitor engaging in the solicitation of Tennessee telephone subscribers to purchase the database from the Authority. ~~Telemarketers~~ Telephone solicitors shall submit a request in writing to the Authority along with a filing fee of \$25. The request must contain the ~~telemarketer's~~ telephone solicitors name, address, telephone number and name of the agent for processing along with a notarized statement from an officer of the company affirming the company will comply with the provisions of this Rule Chapter.
- (2) The following information will be provide to ~~authorized telemarketing~~ telephone solicitation companies and their independent ~~telemarketing contractors~~ telephone solicitors.
  - (a) The telephone number(s) of Tennessee residential subscribers ~~electing to not receive telemarketing calls~~ who object to receiving telephone solicitations.
  - (b) The ~~database~~ Register shall be provided, with unlimited access, via the Internet to ~~authorized telemarketing~~ telephone solicitation companies. It is responsibility of ~~telemarketing companies~~ telephone solicitors to ensure they have the latest version of the database prior to soliciting residential telephone subscribers.
  - (c) Paper copies of the Register will be available to ~~telemarketers~~ telephone solicitors at the current per page rate as set by the state secretary of state pursuant to *T.C.A. §65-1-212*.
  - (d) No ~~authorized telemarketing~~ telephone solicitor company or their independent ~~telemarketing contractors~~ telephone solicitation contractors shall provide the ~~database~~ Register or a copy of the Register to ~~telemarketing companies who are not authorized by the Authority to operate in Tennessee~~ any other person or entity.
- (3) ~~Telemarketing companies~~ Telephone solicitors shall pay to the Authority an annual fee of \$500 to have Internet access to the database.
  - (a) This fee shall be due on or before April 1 of each year. The fee will cover the time period from April 1 through March 31 or any part thereof.
  - (b) The Authority shall render a bill to each ~~telemarketer~~ telephone solicitor authorized to conduct business in Tennessee by February 15 of each year.
  - (c) The annual fee of \$500 shall ~~not be prorated~~ on a monthly basis for periods ~~of~~ of less than one (1) year.
- (4) Independent telemarketing contractors employed by an ~~authorized telemarketer~~ telephone solicitor may make application to the Authority to pay a reduced annual fee. The reduced annual fee shall be \$250, if sufficient documentation is produced. Such application shall be made to the DCR Coordinator along with a filing fee of \$25 and documentation, as prescribed by the division, confirming a business relationship exists



between the ~~authorized telemarketer~~ telephone solicitor and the independent ~~telemarketing contractor~~ telephone solicitor.

- (a) A maximum of five (5) independent ~~telemarketing contractors~~ telephone solicitors are allowed per ~~authorized telemarketer~~ telephone solicitor
- (b) The DCR Coordinator shall have the delegated authority to designate the status of an independent ~~telemarketing contractor~~ telephone solicitor

- (c) Any person aggrieved by the DCR Coordinator's ruling on the status of an independent telemarketing contractor ~~telephone solicitor contractor~~ may appeal ~~to chief of the division then directly~~ to the Authority by requesting a hearing before the Authority.

*Authority: T.C.A. §65-2-102 and Chapter 478 of the Public Acts of 1999.*

#### 1220-4-11-.12 CONSUMER REGISTRATION WITH THE TENNESSEE DO NOT CALL REGISTER

- (1) The Authority shall establish and provide for the operation of a Register on which to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations. Such Register may be operated by the Authority or by another entity under contract with the Authority. Guidelines for the operation of the Register are described below:
- (a) Residential telephone subscribers can enroll on the Register by filling out an application form provided by the Authority. The form will include the residential telephone subscriber's name, address and telephone number and any other information deemed appropriate by the DCR Coordinator.
- (b) A residential telephone subscriber will remain in the "do not call" database for one year and to provide the opportunity for renewal prior to the one-year expiration. ~~on the Register until he/she requests the Authority remove their name.~~ It is the duty of the residential telephone subscribers to notify the division in the event that their telephone number and/or address is changed.
- (c) There will be no charge to residential telephone subscribers to be on the Register.
- (d) Business telephone subscribers may not be included on the Register.
- (e) The DCR Coordinator may purge the Register periodically in order to ensure accuracy.

*Authority: T.C.A. §65-2-102 and Chapter 478 of the Public Acts of 1999.*

#### 1220-4-11-.13 PUBLIC EDUCATION ABOUT THE TENNESSEE DO NOT CALL REGISTER

- (1) Local exchange ~~carriers~~ companies are required to inform their residential subscribers ~~twice~~ once a year of the opportunity to provide notification to the authority or its contractor that such subscriber objects to receiving telephone solicitations. This notification shall appear as a bill message or otherwise accompany the subscribers' monthly telephone bill. ~~a year how to subscribe to the Register. This notification, which shall accompany the subscribers monthly telephone bill, shall include an application, approved by the division, which residential subscribers can fill out and mail to the Authority.~~
- (2) ~~Local exchange carriers, working in cooperation with the division, are required to place information on how to subscribe to the Register in their White Page telephone directory. The notification in the directory shall include an application to the Register.~~

In addition to the notification required by subsection (1), local exchange carriers, working in cooperation with the division, are required to place information in their White Page telephone directory informing their residential subscribers of the opportunity to provide notification to the authority or its contractor that such subscriber objects to receiving telephone solicitations.

- ~~(3) Local exchange carriers and telemarketing companies and their independent contractors are required to inform residential telephone subscribers on how to enroll on the Register as described below:~~

- ~~(a) Inform the residential telephone subscriber that the Authority is the state agency responsible for the Register;~~
- ~~(b) Inform the subscriber that an application for the Register is located in the White Page Directory, or if the subscriber states he/she does not have a directory mail the subscriber an application form for the Register.~~

*Authority: T.C.A. §65-2-102 and Chapter 478 of the Public Acts of 1999.*

#### **1220-4-II.14 VIOLATIONS OF THE TENNESSEE DO NOT CALL REGISTER**

- (1) It is a violation of Chapter 478 of the Public Acts of 1999 and of this Rule Chapter ~~if any telemarketing company or any agent or independent telemarketing contractors acting on behalf of a telemarketing company attempts a telephone solicitation over the telephone with a purpose of soliciting or disseminating information to a Tennessee residential telephone subscriber who has elected to be placed on the Tennessee Do Not Call Register maintained by the Authority unless the following conditions exist~~ for a telephone solicitor to knowingly make or cause to be made any telephone solicitation to any telephone number that appeared in the copy of the Register that was in effect ninety (90) days prior to the time the telephone solicitation was made.
  - (a) The residential telephone subscriber being solicited has had a prior business relationship with the telemarketing company telephone solicitor within the previous prior twelve (12) months prior to the telephone solicitation, or
  - (b) The telephone solicitation is conducted by a non-profit organization, or
  - (c) The telephone solicitation is conducted by a direct employee of a business where the solicitation is occasional and not part of a telecommunications marketing plan. Occasional is defined as less than three (3) telemarketing calls within one calendar week.
- (2) A violation of this Rule Chapter is subject to a civil penalty, payable to the Authority, of an amount not to exceed \$2000 for each violation. In addition, the Authority may seek additional relief in any court of competent jurisdiction.
- (3) ~~Authorized telemarketing Telephone solicitors companies shall be held responsible for violations of this Rule Chapter by their independent telemarketing telephone solicitor contractors, including, but not limited to, fines and/or revocation of authority to telemarket in Tennessee. It shall be a defense in any proceeding brought under this Rule Chapter that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this Rule Chapter.~~
- (4) Violations shall be calculated in a liberal manner in order to protect the public interest and deter similar violations.
- (5) Any local exchange carrier violating any provisions of this Rule Chapter is subject to the penalties prescribed in *TCA § 65-4-120*.

*Authority: T.C.A. §65-2-102 and Chapter 478 of the Public Acts of 1999.*

#### **1220-4-II.15 ENFORCEMENT PROVISIONS**

- (1) The Authority may, on its own motion, or on the recommendation of the division, or the motion of the Consumer Advocate Division, or any other interested person, order the investigation of the practices of any ~~telemarketing telephone solicitation company~~ conducting business in Tennessee. Such investigation shall determine if such ~~telemarketing telephone solicitation company~~ or its independent ~~telemarketing telephone solicitation contractor~~ has violated Chapter 478 of the Public Acts of 1999, or this Rule Chapter. If such investigation discloses a violation of state law or this Rule Chapter, the Authority shall issue a show cause order with respect to such acts pursuant to *T.C.A. §65-2-106*.

- (2) Local exchange carriers and inter exchange carriers are required to fully cooperate with the division in any investigation of an alleged violation of this Rule Chapter.

*Authority: T.C.A. §65-2-102 and Chapter 478 of the Public Acts of 1999.*

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